

U.S. Senator Orrin G. Hatch

Statement on the Senate Floor: Introduction of the SAFE Retirement Act of 2013

As Prepared for Delivery

July 9, 2013

I rise to speak about the pension reform legislation I am introducing today. I am taking this step for a simple reason: America cannot continue sleepwalking into the financial disaster that awaits us if we do not get the public pension debt crisis under control. The bill I introduce today is called “The Secure Annuities for Employee Retirement Act of 2013.” The SAFE Retirement Act for short. In addition to public pension underfunding, the SAFE Retirement Act addresses two other critically important aspects of retirement policy: 401(k) plan coverage and access to professional investment advice for workers and retirees. I will briefly address each part in turn.

I have been working on the public pension underfunding problem, which I call the pension debt crisis, for some time. Two years ago I stood before you Mr. President and described the financial challenge public pension plans pose to Americans. I described how the gap between the pensions that have been promised to workers by State and local governments and the money set aside was as much as 4.4 trillion dollars short by some estimates, more than the total amount of municipal bond debt nationwide. I explained that the problem of public pension underfunding existed before the 2008 recession, and any attempt to lay blame for the problem at the feet of Wall Street or Big Business or some other group was just blame shifting.

I observed how the business world long ago recognized that traditional pension plans — defined benefit plans — had become unsustainable for most private companies, and that most had moved toward 401(k) style plans — defined contribution plans — because costs are lower and more predictable. And they fit well with an increasingly mobile and dynamic workforce. As usual, governments have been slow to innovate, slow to adapt and, when they have acted, their actions have been too limited to solve the problem.

I said at the time that I had not settled on the best solution, but that I was working hard and talking to the experts about the best way to proceed. And that is what I did.

Last year, after extensive study, I delivered a report about the public pension debt problem titled “State and Local Government Defined Benefit Plans: The Pension Debt Crisis that Threatens America.” The study showed that public pension underfunding is a longstanding problem and that the current pension debt crisis goes back more than a decade, if not further. The report explained why public pension debt is a Federal concern, reviewed previous Federal attempts at legislation and more recent State legislative measures focused almost exclusively on new employees, and the attempt by the Government Accounting Standards Board to restore a level of discipline to public pension accounting.

At the end of the report I laid out four essential goals for public pension reform. First, public pension plans must be affordable for public employers and taxpayers. Second, plans must be structured so that taxpayers in the future have no liability for past years of employee service. Third, public plans should provide retirement income security for employees. And finally, a Federal bailout of the states must be avoided at all costs.

As you will see, I listened to people on all sides of the public pension debate, including employee groups that want public plans to provide lifetime income. I could have merely recommended that State and local governments move to a 401(k)-style plan. But I settled instead on a policy of trying to achieve retirement income security as well.

Mr. President, despite numerous legislative initiatives enacted at the State and local level, the public pension debt crisis has gotten worse, not better. In my report I warned that examples like Prichard, Alabama; Vallejo, California and Central Falls, Rhode Island were only the beginning. Sadly, I was right. Since that time we have witnessed to pension debt crisis descend on much larger cities like San Jose, California; Stockton, California; San Bernardino, California; and Detroit, Michigan. Does anyone doubt that a State could be next? How many times does the credit rating of Illinois have to be downgraded before we act? How long can Rhode Island hold out when it is expected to save its struggling cities while it struggles with its own State pension crisis?

The problem is getting more serious every day, and the four goals I outlined in my report cannot be reached merely by fine-tuning the existing pension structures available to public employers. A new public pension design is needed: one that provides cost certainty for state and local taxpayers, retirement income security for state and local employees, and does not include an explicit or implicit government guarantee.

I am pleased to say that I believe I have designed such a plan. Title One of the SAFE Retirement Act creates a new pension plan called an Annuity Accumulation Retirement Plan. I call it the SAFE Retirement Plan.

The concept of the SAFE Retirement Plan is simple. Take advantage of the lifetime income that fixed annuities can provide while mitigating the volatile effect of interest rates on pension levels by purchasing an annuity contract for each worker every year during their career so that a worker builds a solid pension year-by-year during their entire working life.

With a SAFE Retirement Plan, employees receive a secure pension at retirement for life that is 100% vested, fully portable and cannot be underfunded. Employers and taxpayers receive stable, predictable and affordable pension costs. Underfunding is not possible. The life insurance industry pays the pensions and bears all of the investment risk. And unlike current public pension plans, the SAFE Retirement Plan will be protected by a robust and multi-faceted state insurance regulatory system built to ensure financial strength and solvency, and backed up by a State-law-based consumer safety net. Rather than impairing their pension plans, States that adopt the SAFE Retirement Plan will be upgrading their pension plans.

Remember, there is no Pension Benefit Guaranty Corporation backing up State and local pension plans. And there never will be. Corporations that sponsor pension plans pay premiums to the PBGC and their workers and retirees receive a level of insurance in the event the plan does not have assets sufficient to pay promised benefits. State and local workers enjoy no such protection, so another solution is needed. The SAFE Retirement Plan is the answer. It is supported by a well-regulated, highly solvent State insurance system and has a built-in financial backstop that doesn't rely on State or Federal taxes. Honestly, regardless of which side of the debate you have been on to date, you must acknowledge that from a solvency perspective this is a big improvement over the current public pension system.

Now I know that some will argue that my bill will give too much new business to the life insurance industry. Well, that's not how I look at it. The way I see it, my bill takes advantage of the life insurance industry to help Americans solve a serious pension problem. After all, the life insurance industry is the only industry in the world designed from the ground up to manage longevity risk.

Annuity contracts purchased through a SAFE Retirement Plan will be competitively bid upon, on a group contract basis, so that the workers receive the highest possible pension in retirement. Government finance officers will be involved in the bidding process to ensure best practices, and life insurance companies will be supervised by their respective State Insurance Departments. The life insurance industry is reliably solvent because State insurance regulations are strict, with stringent reserve requirements and conservative investment standards. In fact, State-licensed life insurance carriers survived the 2008 stock market meltdown in far better condition than any other part of the financial sector.

Mr. President, the status quo is no longer acceptable. In fact, maintaining the status quo comes with a very high cost. In 2011, S&P downgraded the United States in part because of the enormous debt represented by underfunded State and local pension plans. The credit rating agencies have downgraded Illinois multiple times. And Moody's has begun scrutinizing State and local pension obligations more closely. What will happen when the credit rating agencies see that most State and local governments have no serious plan to address the crisis?

A pension is insurance against outliving the money you have available to pay your monthly bills. It cannot be denied that people are living longer. And as wonderful as that is, it also means we need to find new ways to stretch our monthly pension dollars over longer lifetimes. The SAFE Retirement Plan can meet the test.

Mr. President, in addition to public pension reform, Title Two of the legislation I introduce today has several important private pension reforms. The centerpiece is the Starter 401(k), a new type of 401(k) plan that allows employees to save for retirement while placing minimal burdens on employers. Starter 401(k) plans allow employees to save up to 8,000 dollars each year but do not require employer contributions. This plan will be especially useful to small companies that don't have a retirement plan and start-up companies that must devote all of their resources to building their business in the early years.

The Finance Committee has received evidence in hearings that access to a retirement plan at work is the best way to ensure that individuals save for retirement. The policy goal of Congress, therefore, should be to encourage employers to establish and maintain a workplace retirement plan. The corollary is that Congress should not adopt policies that discourage employers from maintaining a retirement plan.

The Starter 401(k) is a winner on all counts. It is targeted at businesses that don't already have a plan for their employees; it allows employers to help employees save their own money in amounts greater than they could on their own; and it has none of the expensive and burdensome testing and contribution obligations for employers associated with other retirement plans. As one of the many supporters of this bill told me: "[T]he Starter 401(k) is an idea whose time has come."

In addition to the Starter 401(k), the private pension reforms I introduce today will help employers by simplifying reporting rules, easing discrimination testing safe harbor rules, allowing modernized electronic disclosure options and encouraging the provision of lifetime income options for employees. These are common-sense and long-overdue reforms to our nation's retirement savings laws, especially with regard to small-and mid-sized employers.

And last, but not least, Title Three of the legislation I introduce today will ensure that retirees continue to have affordable access to professional investment advice.

Mr. President, the Acting Secretary of Labor is set to re-write a 1975 regulation and dramatically expand the ERISA fiduciary duty and prohibited transaction rules applicable to 401(k) plans. The Acting Secretary also intends to apply the new and restrictive rules to IRAs, which will cause investment advisors to stop providing advice to many IRA owners. I have written to the Secretary of Labor in the past about the issue but my concerns have not been addressed. In fact, there have been a number of letters from Members in both Houses of Congress and on both sides of the aisle imploring the Department of Labor to reconsider the issuance of the expansive and burdensome regulations. 40 members of Congress have written the Labor Secretary on this issue just since February, to no avail. In light of the DOL's intransigence, my bill includes a legislative solution to the problem.

The IRA prohibited transaction rules are codified solely in the Internal Revenue Code and address transactions that involve self-dealing and conflicts of interest. Prior to the issuance of a 1978 Executive Order, Treasury had jurisdiction over the IRA prohibited transaction rules governing investment advice. The 1978 Order transferred Treasury's jurisdiction to the DOL.

The SAFE Retirement Act restores jurisdiction for IRA prohibited transaction rules to the Treasury Department. In addition, Treasury will be required to consult with the Securities and Exchange Commission when prescribing rules relating to the professional standard of care owed by brokers and investment advisors to IRA owners.

The 1978 Executive Order also transferred to the DOL some of the Treasury Department's joint jurisdiction over the prohibited transaction rules applicable to retirement plans. The bill I introduce today restores joint Jurisdiction to Treasury and the DOL.

Joint jurisdiction makes sense in light of the DOL proposal to expand the 1975 regulation because Treasury must enforce prohibited transaction violations through the assessment of excise taxes. Treasury should have a role to play in any expansion of the rules because expanded rules will mean more excise tax cases for the IRS to process.

If the Acting Secretary of Labor believes that the 1975 fiduciary regulation that has governed retirement investment advice for nearly four decades should be revisited, then the 1978 decision to grant the Secretary of Labor additional ERISA regulatory authority also should be revisited. After all, we don't know that the DOL would have been granted additional authority in 1978 if the sensible 1975 regulation had not been issued.

Mr. President, make no mistake: the position I take today regarding IRA investment advice is not a partisan position. In the last Congress, 124 members from both sides of the aisle and from both chambers, including 75 democrats I might add, wrote to the Labor Secretary asking her not to take this course of action. The Secretary finally withdrew the proposal last year. But now that the Acting Secretary is again threatening to reintroduce this ill-conceived rule, dozens of members of Congress have again written the Acting Secretary asking that IRAs be protected.

Mr. President, I would like to submit for the record two letters written in March and June of this year by a total of 40 members of the House democrat caucus once again asking the DOL to avoid the mistake it about to make.

Mr. President, these letters are proof positive that opposition to the Labor Department's fiduciary regulation continues to be both bipartisan and bicameral.

As I close Mr. President, I also want to place in the record copies of the many letters of support I have received for the SAFE Retirement Act of 2013.

The letters come from businesses and organizations representing employers, life insurance companies, State insurance commissioners, State guaranty associations and tax policy groups. These letters demonstrate that the SAFE Retirement Act is good policy and will make good law. America's retirement system deserves no less.

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